

Application Serial No. 10/009,714
Amendment dated August 8, 2003
Reply to Office Action dated April 9, 2003

REMARKS/ARGUMENTS

In response to the objection to the drawings, Claims 4 and 5 and claims dependent thereon have been canceled. However, the cancellation of these claims is without prejudice to Applicant's right to resubmit the claims if the drawings are amplified to illustrate the spacers.

Claim 1 has been amended to incorporate subject matter from Claim 2 and further to call for the spacers to be spaced in such a manner that hand access between the angle sectioned elements is permitted. It is submitted that this amended claim and the claims dependent thereon patentably define over the prior art of record in the present application.

Although Meyers discloses holes punched at specific centers, Meyers makes no reference whatsoever to any closed sections such as shown in Fig. 6 of the present application and is therefore restricted in use along two parallel flanges and the web section connecting the two flanges. This is significant when one considers that the use of such a closed section thereby requiring the installer to fasten the connecting bolts from within the section would be extremely difficult if possible at all. This points up the advantage of Applicant's claimed invention wherein two angle sectioned elements are held together in a parallel, spaced-spaced apart configuration by means of spacers that are spaced apart to permit hand access between the angle sectioned elements. Furthermore, Meyers provides no disclosure whatsoever of end plates as called for in Claim 1 of the present application nor does Meyers provide any motivation or suggestion that end plates could be used. Meyers also fails to utilize angle sectioned elements as called for in Claim 1 as presently amended. Rather, it discloses the use of U-shaped elements.

Although McCracken discloses the use of end plates, they are utilized in connection with U-shaped elongated elements rather than elongated angle sectioned elements as called for in Claim 1.

Henderson does disclose angle sectioned elements that are connected together by means of spaced plates but there is no disclosure of end plates as called for in Claim 1 of the present application and the spacing of the holes in Henderson does not conform to the detailed hole spacing arrangement as claimed.

It is submitted that the end plates of McCracken could not be fastened to the ends of the Henderson members in the manner as disclosed by McCracken because McCracken specifically discloses the end plates as being seated within notched portions of the U-shaped members connected back-to-back and distinguishes this over the prior art (column 3, lines 40-58). To combine McCracken and Henderson would not only require that it be obvious to fasten the end

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plates of McCracken on the ends of the interconnected angle members but further that it be obvious to arrange a pair of the interconnected angle assemblies in a back-to-back arrangement and notch the same to provide seating of the end plate in the manner taught by McCracken. McCracken and Henderson certainly don't make these modifications obvious.

It appears that the Examiner has read the detailed combination of elements set forth in the claims and then gone out and found individual elements in disparate references and tried to combine those elements to meet the subject matter defined by the claims. However, it is submitted that the Examiner has failed to establish a *prima facie* case of obviousness because there is not establishment of a teaching or suggestion to combine Meyers, McCracken and Henderson.

It is well settled that "the Examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). It is equally well settled that "a *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing *In re Bell*, 991 F.2d 781, 782 (Fed. Cir. 1993)). Stated another way, "(t)he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citing *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984)). Not only must the Examiner bear the burden of showing a teaching or suggestion to combine references to establish a 35 U.S.C. § 103 obviousness rejection, but the Examiner must also indicate where such a teaching or suggestion can be found in the relevant reference. See *In re Yates*, 663 F.2d 1054 (C.C.P.A. 1981) (when the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference).

Not only has the Examiner not established within the references a teaching or suggestion to combine them, combining the references would require such distortion of what is disclosed in the references that it would be difficult to make the combination even with the hindsight provided by the present application. In this regard, it is again noted that McCracken and Meyers disclose U-shaped elements and not angle elements as disclosed by Henderson, and the provision of McCracken-like end plates on Henderson would require significant modification of the structure and arrangement disclosed by Henderson. For these reasons and the reasons set forth

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above, it is submitted that the detailed structure set forth in Claim 1 and the claims dependent thereon would not be obvious over the combination of Meyers, McCracken and Henderson within the meaning of 35 U.S.C. § 103.

Claim 6 requires an even greater stretch to make an argument that the claimed subject matter would be obvious over the prior art because it requires the combination of four prior art references, none of which provides a teaching or suggestion of the combination. With regard to Martin, the truss-like member interconnecting the angles does not meet the limitation of "spaced apart spacers" and the use of such a truss-like member would provide much more difficulty in gaining access to the inside portion of the member for connecting fastening elements.

It is submitted that no combination of the cited references yields the solution provided by the present invention nor is there any suggestion or teaching to combine the references to meet the claimed combination. It is requested that the Examiner reconsider and withdraw the rejection of the claims and pass the application to issue.

It is requested that the Examiner telephone the undersigned at 260-460-1692 if such would be of assistance in expediting prosecution of the application.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: August 8, 2003

JOHN F. HOFFMAN, REG. NO. 26,280

Name of Registered Representative

Signature

August 8, 2003

Date